



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: SEPTEMBER 12, 2017

FROM: COMMUNITY & ECONOMIC DEVELOPMENT WARDS: ALL
DEPARTMENT

SUBJECT: ADOPTION OF AN INTERIM ORDINANCE ESTABLISHING A MORATORIUM ON
COMMERCIAL MARIJUANA LAND USES AND ACTIVITIES AND
RECREATIONAL OUTDOOR CULTIVATION

ISSUE:

Adopt an interim ordinance establishing a moratorium on commercial marijuana land use entitlements, building permits, business licenses and any other applicable approvals or decisions for commercial marijuana land uses or activity, and all recreational outdoor cultivation, for an initial period of 45 days.

RECOMMENDATIONS:

That the City Council introduce and immediately adopt the attached interim urgency ordinance for a moratorium prohibiting all land use entitlements, building permits, business licenses and any other applicable approval or decisions for commercial marijuana land uses and/or activities, as well as prohibiting all outdoor cultivation of recreation marijuana but exempting laboratory testing facilities.

LEGISLATIVE HISTORY:

On November 8, 2016, California voters approved Proposition ("Prop") 64 (The Adult Use of Marijuana Act). The Adult Use of Marijuana Act (AUMA) approved recreational use of marijuana, and allows commercial marijuana activities associated with the cultivation, manufacturing, transportation, distribution, testing and dispensing of marijuana for recreational and personal use in the State of California. Prop 64 was in addition to the existing Medical Cannabis Regulations and Safety Act (MCRSA) passed by the State legislature and signed into law by the Governor in September 2015. On June 27, 2017 Governor Jerry Brown, signed SB 94, creating the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which effectively repealed MCRSA and incorporated certain provisions of the MCRSA in the licensing provisions of AUMA thus integrating the rules for both medicinal cannabis (MCRSA) and adult use of marijuana (AUMA).

BACKGROUND:

On March 7, 2017, City Council held a workshop to discuss the potential impacts of Prop 64 on the City. At this meeting many questions were raised by the City Council that were to be addressed and answered at a subsequent workshop.

On July 25, 2017, City Council held a second workshop and received an overview from the District Attorney's Office, an update on the State of California's implementation of MAUCRSA, answers to some of the City Council's prior questions were given and many more questions and/or concerns were raised. At the July workshop, City Council directed staff to prepare a moratorium on all commercial marijuana activity so that it had sufficient time to consider and develop appropriate regulations. Additionally, the City Council requested that staff consider removing marijuana testing laboratory facilities from the moratorium.

DISCUSSION:

Currently, the City specifically prohibits medical marijuana dispensaries and commercial marijuana cultivation per the Permitted Uses Table (19.150.020 (A)) of the Zoning Code. Other commercial marijuana land uses, particularly related to non-medical purposes, are not specifically listed within the Permitted Uses Table, and are therefore prohibited per Section 19.150.020 which states that *"uses not listed in Tables are prohibited, unless the Community & Economic Development Director or his/her designee, pursuant to Chapter 19.060 (Interpretation of Code), determines that the use is similar and no more detrimental than a listed permitted or conditional use."*

Chapter 19.342 provides a limited exemption for the non-commercial medical marijuana cultivation of no more than eight (8) marijuana plants by primary caregivers and qualified patients for their own medical use, subject to site location, operational and development standards.

With the passage of Prop 64, by remaining silent on non-medical commercial marijuana land uses, it could result in all commercial marijuana uses being allowed in the City. However, a comprehensive analysis of state law and best practices from other communities is needed in order to develop regulations that address the City Council's ultimate direction. In order to allow time to thoroughly develop the appropriate regulations, a moratorium on all land use entitlements, building permits, business licenses and any other applicable approvals or decisions for commercial marijuana land uses and activities, as well as on outdoor personal cultivation of recreational marijuana, is necessary.

Proposed Exemption for Licensed Marijuana Testing Laboratories

Based on the City Council's comments at the July 25 workshop, there is a desire to consider allowing marijuana testing laboratories independent from the other marijuana uses. Testing labs will play an integral role in the implementation of MAUCRSA, as they would be responsible for testing marijuana samples and issuing certificates of analysis to retailers, which must be done before marijuana can be sold. The State is currently working on rules and a licensing process for testing facilities. Not including marijuana testing laboratories uses in the proposed moratorium will allow staff to immediately begin to draft regulations and prepare appropriate amendments to regulate marijuana testing laboratories, for future City Council consideration

REQUIRED INTERIM ORDINANCE FINDINGS:

Pursuant to California Government Code Section 65858, in order to protect the public safety, health, and welfare, the City may adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering, studying, or intends to study within a reasonable time. An interim ordinance requires a four-fifths vote of the City Council for adoption.

An interim ordinance can only be effective for an initial period of no more than 45 days. Prior to its expiration, the City Council may, after a public hearing, extend the interim ordinance for up to 22-months and 15-days. Extensions also require a four-fifths vote.

If adopted, the proposed interim ordinance will prohibit the approval of land use entitlements, building permits, business licenses and any other applicable approvals or decisions for commercial marijuana land uses or activities, as well as on recreational outdoor cultivation. It is necessary to adopt an interim ordinance due to an immediate threat to the public health, safety and welfare based on the following findings:

1. Significant concerns have been raised regarding the impacts that possessing, planting, cultivating, harvesting, drying, processing, distributing, transporting, storing, manufacturing, and selling of marijuana will have on public health, safety, and welfare in the City, including the protection of environmental resources and neighborhood quality.
2. It is necessary for the City to protect the public's interests in the aesthetic, economic, health, safety and community character, until additional staff review has been completed and any necessary local regulations or code revisions have been revised, adopted and otherwise made effective.
3. Improper marijuana cultivation poses an environmental health risk to the public and may create a public nuisance, including without limitation: offensive and irritating odor, degradation of air quality, excessive noise, risk of criminal activity, improper and/or dangerous electrical alterations, and impairment of the general quality of life of property owners and occupants adjoining marijuana cultivation sites.
4. Additional time is required to ensure that prior to the adoption of any regulation, adequate security measures are implemented to ensure that the cultivation, concentration or sale of marijuana in any location or premises does not negatively impact surrounding homes or business by increasing nuisance activity such as loitering or crime.
5. The adoption of a comprehensive marijuana ordinance that addresses both commercial marijuana activities and outdoor personal cultivation of recreational marijuana will take time and careful consideration and will require input from various community stakeholders and the general public.
6. The City has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and preserving the peace and integrity of neighborhoods within the City.
7. The issuance of land use permits, building permits, licenses, or other entitlements for

commercial marijuana activity and outdoor personal cultivation of recreational marijuana, would pose a current and immediate threat to the public health, safety, and welfare, since such uses could potentially create conflicts with surrounding land uses, and could conflict with the City's long-term planning goals to be implemented through the City's General Plan, Specific Plans, and Zoning Ordinance.

8. In order to address community concerns regarding the establishment of commercial marijuana activity and outdoor personal cultivation of recreational marijuana, it is necessary for the City to study the impact such uses will have on the public health, safety and welfare, and potentially adopt new regulations.
9. In order to protect the City's investment in its planning efforts, ensure that the City's long-term planning goals and strategies can be achieved in an effective and timely manner, and to avoid a current and immediate threat to the public health, safety, and welfare it is necessary for the City to study the impact any new regulations regarding commercial marijuana activities and outdoor personal cultivation of recreational marijuana will have on the public health, safety and welfare.
10. The citizens of the City will benefit from a comprehensive and thoughtful local regulatory scheme that addresses the potential impacts of commercial marijuana activities and outdoor personal cultivation of recreational marijuana.
11. There is an immediate need to prevent unregulated commercial marijuana activities and outdoor personal cultivation of recreational marijuana, which have the potential to affect the character and aesthetic of the community.
12. The issuance of land use permits, building permits, licenses or other entitlements for commercial marijuana activities and outdoor personal cultivation of recreational marijuana would pose a current and immediate threat to the public health, safety, or welfare, since such uses could potentially conflict with the City's long-term planning goals and the development of the City.
13. The adoption of a moratorium is necessary to prevent the potential grandfathering of commercial marijuana activities and outdoor personal cultivation of recreational marijuana.
14. A moratorium on commercial marijuana activity and outdoor personal cultivation of recreational marijuana is required to allow the City the opportunity to consider the various policy implications of authorizing recreational marijuana activity in the City and to develop a comprehensive approach to regulate marijuana-related activities authorized by MAUCRSA.

FISCAL IMPACT:

There is no impact to the General Fund as a result of the adoption of this moratorium ordinance.

Prepared by: Rafael Guzman, Community & Economic Development Director
Certified as to
availability of funds: Adam Raymond, Chief Financial Officer/City Treasurer
Approved by: Al Zelinka, FAICP, Assistant City Manager
Approved as to form: Gary G. Geuss, City Attorney

Attachments:

1. Presentation
2. City Council Report – July 25, 2017
3. Ordinance